Quid Novi

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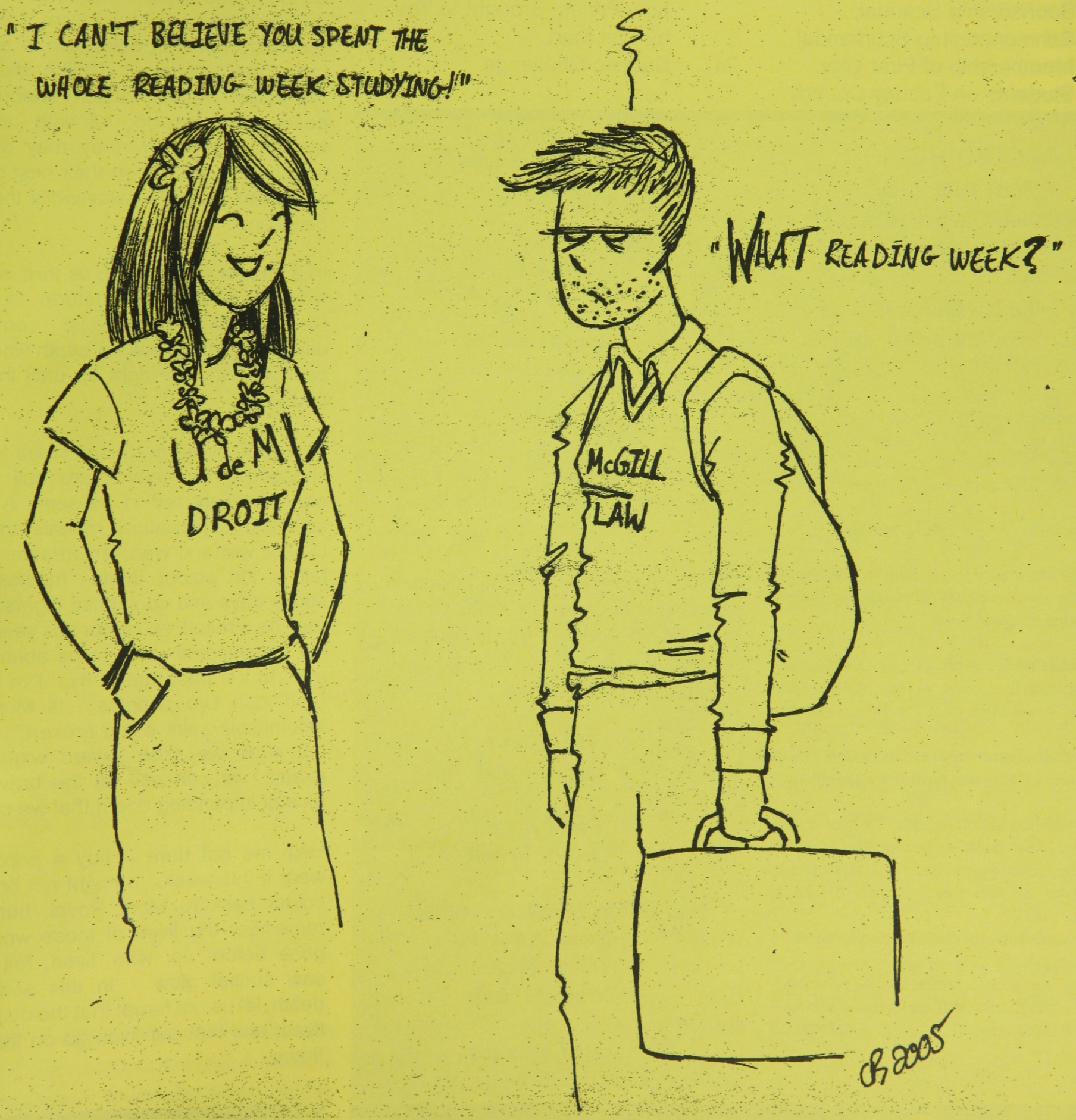

In This Issue...

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Envoyez vos commentaires ou articles avant jeudi 5pm à l'adresse: quid.law@mcgill.ca

Toute contribution doit indiquer l'auteur et son origine et n'est publiée qu'à la discrétion du comité de rédaction, qui basera sa décision sur la politique de rédaction telle que décrite à l'adresse:
http://www.law.mcgill.ca/quid/edpolicy.html.

Contributions should preferably be submitted as a .doc attachment. All anonymous submissions will be rejected.

Editor's Note

It is fitting that Remembrance Day is the fall. What better time to remem death and sacrifice than a time when natural world is dying away, and darkness coming earlier and earlier ea night?

It's a shame that Remembrance Day not a statutory holiday in Quebec a Ontario, as it is in the rest of Canada. beginning to wonder, though, if the might not be a connection betwe biogeography and this fact. Out we trees turn to sedate browns and yello in the fall. It's an orderly, uniform chan as the prairie aspens, ashes and popla do what their neighbours are doing. the east, however, trees turn to a riot reds and oranges. Unlike the qu resignation of their western brethren, t eastern maples go out with one la huzzah. Tomorrow they may die, b tonight they will put on their best colou and party the night away while the ban plays on.

In a natural setting such as this, is it litt wonder that the attitude toward Remembrance Day is somewh different? Why dwell on death when yo can celebrate life right up until the ve end?

This year, however, things seem to hav changed. The leaves are dull yellow nary a defiant red to be seen. A pure scientific explanation reveals that th cloudy, wet and warmish weather of th fall is the colour thief - maples nee sunny days and cool, crisp nights to tu red. As a result, no colour this year. Eve my red poppies seem to be abandonin me. In the past three days, I've boug (and lost) two poppies. Is Montrea indomitable spirit being broken? I ho not – as we slide toward winter, a exams, we can use all the bravado face of impending doom that we can g

Help me out here – buy a poppy a wear it this week. It might not bring t colour back to Mont Royal, but it remember the lives of those who ha gone before us, who 'lived, felt dav saw sunset glow'. In this season death, let us not forget that the dead or lived, and that our lives go on thanks theirs.

-L

In Response to Unreasonable Criticism of the Reasonable Man

by Amanda Glover (Law I)

I respect that everyone has his/her own interpretation of/opinion regarding articles in print. I also realize that whenever one subjects his/her work to public scrutiny, one runs the risk of criticism. That said, I do feel the need to respond to David Perri's critique of my previous article on the Reasonable Man. Perhaps I am being thin skinned here, but I feel the need to defend my poor little piece against accusations of "preachy arrogance", "exclusionary attitudes", and "veiled condescension".

Furthermore, I would like to refute the assertion that in writing this piece I exhibited an attitude which screams, and I quote, "fuck the little people, I've got two law degrees! I am so utterly and wholly better than you." First of all, I am a lady and never use expletives unless absolutely necessary. Secondly, I don't have any law degree yet, and whatever pretensions I may have are in no way related to my two months in law school. (If anything becoming a law student has informed me of how utterly clueless I remain despite four years of university).

My article was, in fact, not originally written for the Quid. It was an exercise in Professor Khoury's torts class: write a definition of the reasonable man, given a very limited exposure to the concept. Feeling particularly enthusiastic, I read my little definition aloud, and an editor of the Quid later requested a copy for publication.

Given the laughs which the definition prompted in class, I assume that said editor found the piece mildly amusing and requested it for this reason.

I can by no means critique Mr. Perri for having failed to see any comedic value in my text. We all have different ideas about what is and isn't humorous. However, I find it hard to understand how he neglected to glean any intent of jest/satire/playfulness from such hyperbolic language. Mr. Perri makes assertions about what he views as the "not so subtle message" of my text, yet he refuses to acknowledge, or perhaps honestly didn't see, the subtler message.

What I was trying to express was the idea that this "reasonable man" is the everyman, the "average" man - I was in no way passing judgment. The allusion to Immanuel Kant was a reference to a lack of formal education. I was not literally saying that anyone who does not discuss Kant is an unenlightened cretin.

Mr. Perri took issue with the way in which I described this "reasonable man" - this "average Joe", this "everyman". He says that I have described him as a "hick", that I have expressed a high degree of disapproval and indeed disrespect for the "reasonable man". I chose my description carefully, trying to match it to the description of the "average" men we seem to see reflected in pop culture. (Dan Conner, Fred Flintstone, and Homer Simpson, among others.) These descriptions of what is "average" may or may not be accurate, and are, perhaps, even demeaning. This is precisely why this standard is so problematic - trying to pin down what is "average" is difficult enough in and of itself, let alone trying to force everyone to conform to that standard.

I would also like to point out that Mr. Perri's text betrays shades of the elitism of which he accused me. He says that lawyers solve problems for the "ordinary" citizens, and in so doing creates a dichotomy between the pedestrian masses and their advocates. (How could lawyers ever be put in the same category as the …gasp…ordinary folk?) Then he poses the question "has Ms. Glover ever associated with people…not on their way to a bright, successful future as pretty much all of us here are?" (An aside - yes she has.) Isn't assuming that a certain career yields more "success" than another a form of elitism? I'm also flabbergasted by his final line which seems to imply that listening to Nickelback is an indication that one is "shallow" and "vapid", which, although I must confess I didn't really understand the relevance of Nickelback to the argument, seems, in a certain way, elitist itself.

Lastly, I really don't see the correlation between my text and this band "Propagandhi" which touted leftist values in a didactic and condescending manner. My text was not a political treatise. It was an attempt to articulate a legal concept and to promote discussion in doing so. It was deliberately exaggerated for effect. Furthermore, it seems to me that a two page article embarking on a serious criticism of a paragraph long definition is far more reminiscent of a "Chomsky-inspired rant" than the definition itself. ■

Let's Lay Off the Personal Attacks

by Jennifer Hansen (Law I)

I would like to offer some clarification on the circumstances surrounding Ms. Glover's "Reasonable Man" submission in the October 25 issue of the Quid. During one of our Extra-Contractual Liabilities classes, Professor Khoury asked us to think about what we considered the Reasonable Man to be before reading our assigned articles on the subject. The idea was to explore our pre-conceived notions of who we considered the Reasonable Man to be. Ms. Glover decided to put a humorous spin on the idea, and read out her rendition in class. In general, the class, including Professor Khoury, found it humorous, and Professor Khoury even mentioned that she'd like to add her anecdote into her ECO coursepack for next year.

As a member of the Quid editorial committee, and someone who, quite frankly, found her definition of the Reasonable Man to be amusing, I approached Ms. Glover and asked her if she'd like to submit it to the Quid. She was delighted, and happily sent the file along to us.

I realize that perhaps some context should have been given to the article prior to submission. The intent was not to offend anyone, as it was meant as a joke, and should be taken as such.

In the end, this article was meant to be a light-hearted, comical story about what characteristics the classical Reasonable Man encompasses. Its purpose was to point out the (wrong?) conceptions that abound about the Reasonable Man to those of us who have never encountered him before. All Ms. Glover was trying to do was provide a little comic relief in an environment that is all too often serious and competitive.

As the one who encouraged her to submit the article, I take issue with Mr. Perri's blatant personal attack on Ms. Glover in last week's edition. As one of our Editors-in-Chief once told us, the Quid is not a forum for poisonous attack. Although I sincerely hope this will not be the case, unfortunately, the kind of personal and poisonous attack that Mr. Perri appears to be displaying toward Ms. Glover will likely discourage others from submitting their articles to the Quid for fear of similar reproach. So please, let's lay off the personal attacks…■

Why the Reasonable Man should read Kant

by Marguerite Tinawi (Law I)

I remember reading Amanda Glover's article last week ("The Reasonable Man") and thinking: how very amusing, but what is she really trying to convey? Is this an essay to portray the average North American, a disguised critique - remember, Halloween was coming - of responsibility in modern societies, a first year's desperate attempt to humanize this annoying legal fiction or even perhaps the first part of a serialized horror story (imagine the suspense… Mr Reasonable is back… and he's here to kill…)?

In any case, I certainly had no "visceral reaction" while reading her article.Yet others did. My older "colleague", David Perri, was shocked by Amanda's words. Aparté: For the sake of anti-elitism, I'll abolish the Ms. Glover and go with Amanda. Same treatment for you David!

As I read David's article in the bus, I thought, wow, this is nicely written, "sensible", well-argued… and politically correct. Who would dare say anyways that the average man is stupid and uneducated? That he drinks beer and eats too many donuts? C'mon, this is a joke… Surely Amanda is out of her mind or she's really an evil person: educated, condescending, infatuated with her law student status… you name it! Has she "ever even associated with people who aren't academically inclined"? Why, let's bet she's never taken the metro, eats organic food, wears glasses and attends seminars on the pre-Socratic era… What about that, eh?

I think you got my point: stereotypes are everywhere, in all of our thoughts, in everything we say. That's probably why Amanda's words didn't offend me as much as you, David. I saw Amanda's article in a different perspective. Sure, it was as full of oh-so-nasty-stereotypes, but on the other hand I perceived it as very ironical and, in some points, very true. ▸

Elitists, hockey fans and punk rockers agree: writing for the Quid is reasonable.

Amanda wrote that Lars, alias Mr. Reasonable, was middle-aged. Well if we take statistics for 2004, the average age of Quebec's population was 39.3. Rather middle-age, no? Let's go on. Out of the 3.625 million employed in Quebec, 3.142 are employees. If I'm not mistaken, this implies a whole lot of people working for others.

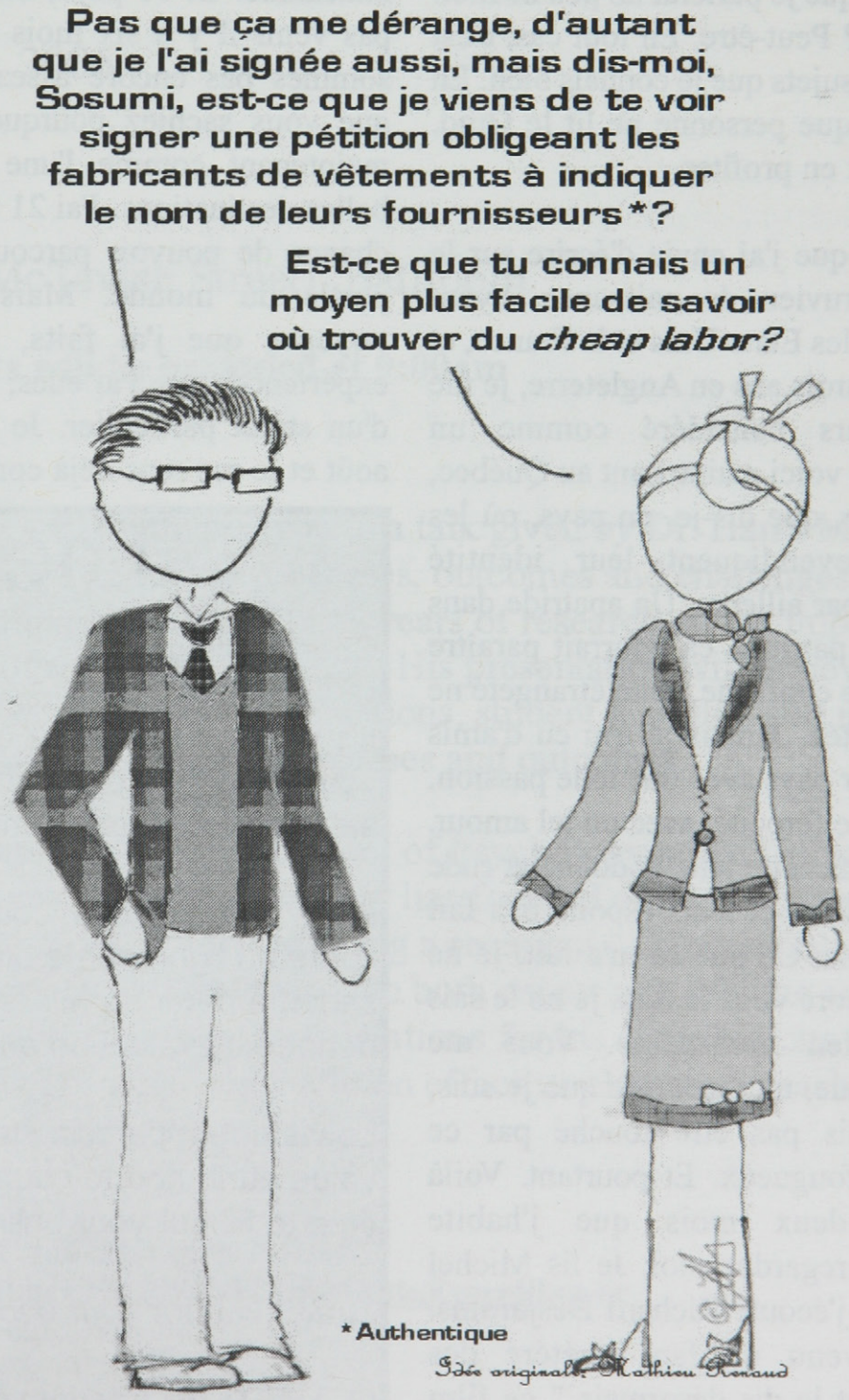
In Quebec, 14% of the adult population is obese, 31.5% is overweight. A traditional Krispy Kreme doughnut weighing 57g contains about 25% of oil. This is already 20% of the fat you should get per day. And when you think that Krispy Kreme uses enough chocolate each year to fill nearly five Olympic-sized swimming pools and 1.3 million pounds of sprinkles, enough to fill 33 18-wheeler trucks… I'm suddenly under the impression that fast-food and doughnuts might have something to do with our population's weight problems.

I found no statistics on "I'm with stupid" t-shirts, little beer drinking hats and whoopie cushions, so I'll skip directly to the last issue which is fundamental: education. In Quebec, 17% of the population has a university degree. Each year, one student out of three drops out of high school. The Reform in education is such a monumental flop that the government is suspending its application for a few years. Field-experience - I substituted in a public primary school - has taken me aback: our education system is incredibly weak. Kids learn nothing since it would require way too much effort on their parts, on the part of teachers and on the part of parents. Everything has to be fun and entertaining. I call school "luxury baby-sitting". You think I'm joking… well, how about this: parents seriously complaining because their child in grade 5 had to write a ten line text. Too hard they say…

I could go on forever… So here's my point: it is very valuable to defend the weak and the ignorant. And I agree with you David; we should respect everyone regardless of their education degree or knowledge of Kant's theories. But beware of relativism! Respecting others doesn't mean we should stop trying to improve our society. And in my opinion -but this is of course disputable - education and intellectual effort are key elements to a better society. We battled hard against ignorance over the past centuries and we shall continue! ■

Les aventures du Capitaine Corporate America

by Laurence Bich-Carrière (Law II)



«Pétition sans principes»

L'Apatride

par Cedric Soule (Law I)

Ca fait longtemps que je n'écris pas. Trop longtemps. Et ce soir, je n'avais rien à faire. Je suis rentré de la fac, j'ai dîné (vous m'excuserez, je ne parle pas encore Québécois couramment et employer le mot souper m'est encore difficile), et je suis parti faire du roller au Parc La Fontaine. Il est maintenant minuit. Je suis chez mon voisin à écouter de la musique indienne et j'ai envie d'écrire. De quoi, je ne sais pas. On verra si l'inspiration me prend. Ce qui est sûr, c'est que je parlerai un peu de moi. Prétentieux ? Peut-être. En tout cas, c'est un des seuls sujets que je connais bien. En plus, on dit que personne ne lit le Quid. Alors, autant en profiter…

Je pense que j'ai envie d'écrire sur le Québec. Péruvien de naissance, ayant grandi entre les Etats-Unis et la France, et revenant de trois ans en Angleterre, je me suis toujours considéré comme un apatride. Me voici maintenant au Québec, une province, que dis-je, un pays, où les habitants revendiquent leur identité comme nul par ailleurs. Un apatride dans une contrée patriote, ça pourrait paraître étrange. Et je confirme, cette étrangeté ne m'a pas quittée. Jamais je n'ai eu d'amis parler de leur pays avec une telle passion, avec une telle férocité, avec un tel amour. Entendre dans cette langue douce et rude leurs frustrations et leurs espoirs m'a fait quelque chose. Ce que ça m'a fait, je ne peux pas encore vous le dire, je ne le sais pas très bien moi-même. Vous me répondrez que, tout apatride que je suis, je ne devrais pas être touché par ce patriotisme fougueux. Et pourtant. Voilà seulement deux mois que j'habite Montréal et regardez moi. Je lis Michel Tremblay et j'écoute Richard Desjardins. Je suis devenu un fan invétéré des Canadiens, et je dis désormais " ce film est poche ". Tout cela pour un garçon qui n'a jamais pris une ombre d'accent british en trois ans d'études à Oxford et qui a toujours refusé d'adopter les coutumes anglaises.

Je me pose donc la question : cet amour de la patrie québécoise serait-il contagieux ? Suis-je vraiment tombé sous le charme de cette culture et de ce pays qui ne demandent qu'à être reconnus ? Sûrement. Une chose est certaine pourtant: cette langue qui à mon arrivée me paraissait difficile à comprendre et franchement ridicule, est devenue attachante. Et ce pays, où je ne voulais pas venir il y a six mois (mais nous ne sommes pas encore assez intimes pour que vous sachiez pourquoi), m'apparaît maintenant comme l'une de mes plus belles destinations. J'ai 21 ans et j'ai eu la chance de pouvoir parcourir une bonne partie du monde. Mais de tous les voyages que j'ai faits, de toutes les expériences que j'ai eues, Montréal jouit d'un statut particulier. Je suis arrivé fin août et je me sens déjà comme chez moi. Même s'il me reste une grande partie de la ville à apprivoiser, j'ai l'impression d'avoir déjà mon quartier, mon dépanneur, mon cinéma, mes habitudes.

Je me suis relu et je vois que j'ai parlé plus de moi que du Québec. Typique. Il est minuit et demi et je commence à avoir sommeil. D'autant que j'ai cours à 10h demain, ce qui veut dire qu'il faut je me lève tôt. Alors je vais vous laisser, en espérant que cette tranche de la vie et des pensées de l'apatride vous a tiré de la routine fatigante et quelque peu abrutissante des cours de droit. Je vous raconterai un autre jour comment j'ai réussi à me faire de la truite (pour quelqu'un qui n'a jamais cuisiné de sa vie, avouez que c'est franchement extraordinaire…), ou la fois où j'ai été témoin d'un accident surréaliste sur l'avenue des Pins. Sur ce, bonne nuit et à la prochaine fois. ■

The MOLE Project

Chers collègues,

It's time to share your thoughts on courses taught at the Faculty. This is your chance to provide anonymous feedback and voice your praises, satisfaction, or concerns.

Nous participerons, comme l'année dernière, au projet d'évaluation des cours en ligne par le biais du programme MOLE. L'accès à ce programme se fait à partir de Minerva auquel les étudiants auront accès durant la période d'évaluation qui débute le 17 novembre.

Low student participation in course evaluations significantly discounts the value attributed to course evaluations within the Faculty. Please take the time to fill out your online course evaluations.

Thank you for your cooperation!

LSA/AED VP Academic

For more information about the MOLE project, please visit
http://www.mcgill.ca/dp-cio/mole/

McGill

TEACHING AND LEARNING SERVICES

Dr. Harry Murray

(University of Western Ontario)

will speak on:

"Student course evaluations: Do they make a difference?"

DATE: Friday, November 25, 2005

TIME: 9:15 – 11:00 am

PLACE: Faculty Club, (3450 McTavish Street), Ballroom

Light refreshments will be provided at 9:00am

Teaching and Learning Services (TLS) cordially invites you to a talk given by Dr. Harry Murray, professor Emeritus (University of Western Ontario), about the processes, outcomes and challenges of student course evaluations. Dr. Murray will share the results of his thirty years of research on the impact of student course evaluations on the improvement of university teaching. His presentation will review the empirical evidence concerning the relationship between course evaluations, student learning, and improvement of teaching. He proposes mechanisms for enhancing processes and outcomes.

Harry Murray, PhD, is an Emeritus professor in the Department of Psychology at the University of Western Ontario. His research in cognitive and educational psychology has focused on the improvement and evaluation of teaching in the university context. In addition to being a recipient of University, Provincial and National teaching awards and fellowships, Dr. Murray has won both career and lifetime achievement awards from Canadian and American educational research associations for his contributions to the literature on student evaluations of teaching. He consults extensively on effective classroom teaching, the evaluation of teaching, and the assessment of students' performance.

Faculty and students are welcome!
Please RSVP by Friday, November 18, 2005 via e-mail: tls@mcgill.ca or phone: 398-6648

Exportable droit

by Viviana Iturriaga Espinoza (Law IX)

Je suis convaincue que depuis bien avant la globalisation nous rêvons de voyages et de terres lointaines. Serait-ce une prédisposition génétique? Peut-être. Peut-être est-ce une manière d'assurer la survie de l'espèce? Chi sà. Une chose est sûre, de nos jours, nos vies cosmopolites nous permettent de vivre le dépaysement sans aller trop loin et de vivre le métissage sans nous expatrier. Cependant, si nous voulons réellement nous immerger " ailleurs ", il fait bon vivre maintenant! Maintenant, c'est le maintenant du village global, village dans lequel nous visitons l'autre et découvrons qu'il n'est pas si autre qu'on le croyait et qu'entre nous il existe des aspects culturels qui nous unissent et une compréhension du monde sensible et matériel qui nous rapproche.

Notre culture juridique est un de ces aspects culturels qui nous unit et nous rapproche. Celle-ci n'est pas seulement meublée de codes, de législation et de jurisprudence mais surtout de concepts. Notre formation juridique est exportable. Le savions-nous?

La semaine passée je lisais dans le no. 14 du Journal du Barreau du Québec une entrevue de Me Nathalie Brière. Me Brière est avocate chez Hydro-Québec depuis 1991 et elle est expatriée, avec mari et enfants, à Santiago du Chili depuis 2003. Wow! I wish! L'élément qui m'a interpellé le plus est la fascination qu'elle dit vivre en découvrant qu'elle et ses collègues chiliens se comprennent lorsqu'ils parlent de servitude, de prescription ou de force majeure. Les dispositions codales ne sont pas les mêmes mais les concepts le sont. Elle souligne à la fin de son entretien : " notre formation de juriste, au Québec, est éminemment exportable, et plus d'avocats québécois devraient songer à s'établir en dehors de nos frontières. " (http://www.barreau.qc.ca/journal/vol37/no14/)

Ceci est d'autant plus vrai lorsque nous constatons l'apport de notre Code civil du Québec aux réformes codales de plusieurs pays d'Amérique Latine. En effet, plusieurs pays, pas exclusivement latino-américains, fixent leurs regards sur les solutions retenues par le législateur québécois lorsque vient le temps de moderniser leur code. Qu'elle est la pertinence de notre expérience juridique pour les juristes et législateurs étrangers? C'est une des questions à laquelle les conférenciers essaieront de répondre lors du déjeuner/lunch-conférence du Latin American Law Students Assocation (LALSA) le jeudi 10 novembre.

En attendant d'avoir la détermination de nous exporter :

Le déjeuner/lunch-conférence est organisé par le LALSA dans le cadre des activités du Comité Amérique Latine de l'Association du Barreau canadien et avec le concours du Centre de recherche en droit privé et comparé du Québec (CRDPCQ). Il sera présidé par le juge en chef de la Cour du Québec, M le juge Guy Gagnon et modéré par le directeur du CRDPCQ, le Prof. Jean-Guy Belley. Les deux conférenciers invités sont l'avocate et professeure argentine Mme. Jimena Andino Dorato et l'ancien délégué du Québec au Mercosur, M. Denis L'Anglais. L'inscription est gratuite pour les étudiants et 35.00$ pour les membres de l'ABC. Pour de plus amples renseignements : http://www.abcqc.qc.ca/Comités/comite_amerique_latine.aspx.■

NOT TOO LATE TO SIGN UP FOR LAW GAMES / JEUX RIDIQUES

Were you planning to sign up for Law Games and missed the deadline? Aimeriez-vous prolonger vos vacances d'hiver? You are in luck - our team has additional spots that we need to fill. To participate in the best party to start off the year, fill out a registration form and drop it off in the VP Athletics box in the LSA office with the registration fee. Les feuilles d'inscription sont disponibles dans une enveloppe en dehors du bureau de l'AED. Vous trouverez des renseignements à propos des JeuxRidiques à Sherbrooke sur le site web:http://www.lawgames2006.com. Questions about the McGill team can be directed to kara.morris@mail.mcgill.ca.

No McGill student who comes to law games without being an official participant will be allowed into hotel rooms, nor will they be allowed to participate in any law games events.
Les étudiants de McGill qui viennent aux JeuxRidiques sans être des participants officiels n'auront ni le droit d'accès aux chambres d'hôtel ni le droit de participer dans les événements des JeuxRidiques.

DEADLINE FOR REGISTRATION IS FRIDAY, NOV. 11TH AT 3PM.
LA DATE LIMITE POUR L'INSCRIPTION EST VENDREDI LE 11 NOV. À 15H.

LALSA & CBA QUEBEC EVENT
ÉVÉNEMENT LALSA & ABC QUÉBEC

Reforming the Argentine Civil Code: Quebec's influence

La réforme du Code civil argentin: l'influence du Québec

Jimena Andino Dorato,
Member of the Buenos Aires Bar

Me Denis L'Anglais,
Ancien délégué du Québec pour le Mercosur

Lunch & Conference
Dîner-conférence
10 NOV. 2005 12:00-14:00

Inscription / Registration: inscription@abcqc.qc.ca
Information: latinamerican.law@mail.mcgill.ca

Design: Julien Morisset

How to be an Elected Politician Without Even Trying (Part II)

by Prof. William Tetley

Last week, Prof. Tetley described how he got into politics and ended with some impressions of Jean Lesage. This week, he begins with some impressions of Robert Bourassa....

Robert Bourassa was another interesting personality. He was completely devoid of vanity, but completely dedicated to politics, with very few outside interests. He had a full-time barber because, while having his hair cut at the Ritz Hotel, he had once been criticized for the way his hair had looked on TV the night before. He hired the barber's assistant on the spot. The assistant, who was a jiu jitsu expert, also acted as a bodyguard and file clerk.

Bourassa had a chauffeur, as well, because he never learned to drive, and because he believed, in any event, that driving was a waste of time. He lived in the old Imperial Hotel in Quebec City when first elected as an MNA in 1966 and continued on when he became Premier of Quebec. The rate was $8.00 per night and he only moved out during the October Crisis of 1970 when the Sûreté du Québec, who were guarding him, refused to live in the hotel, because it was far beneath their dignity and the scale granted them, under their collective agreement.

You will remember that Bourassa won the nomination for leader of the Quebec Liberal Party in 1970 against Pierre Laporte and Claude Wagner. Pierre Laporte came on to the stage after the vote, shook hands with Bourassa and promised his support. Wagner, who was extremely imperious, neither went up on the stage, nor shook hands, but next week a secret meeting was arranged at Bourassa's hotel room. Wagner had posed as the poor boy, the servant of the people, but he was thunderstruck when he saw Bourassa's hotel room with a small bed, one chair, a sink and a small bathroom.

Wagner had the choice of the bed or the chair to sit on. There was no reconciliation of the two leaders and afterward Bourassa told me the story privately, but such stories never came out from him publicly. He was a private person and respected the privacy even of his opponents.

Trudeau once described Bourassa as "un mangeur de hot dogs". It is true Bourassa would eat five hot dogs for lunch on the top of the bunker like a ravenous schoolboy, but in the evening he dined with staff colleagues and friends at about 11:00 p.m. in the Café d'Europe, which had the finest cuisine and wines. He was also a very generous host.

Bourassa had little wealth of his own and had actually been born in a small flat in his working class, Montreal East end riding. Under pressure from the Opposition and the press, we had decided to have all ministers declare their assets in detail and to put the assets of a certain value in trust, in order to avoid any conflict of interest. We were the first government in Canada, either provincial or federal, to adopt such a law and Peter Lougheed, the Premier of Alberta, telephoned me to complain. I had known Peter in the practice of law and he said, "Bill, can't you get Bourassa to water it down?" But Bourassa went ahead anyway. One minister owned a shopping centre and others had large accumulations of stocks and bonds, but Bourassa was under the limit even to be obliged to make a declaration, to the amazement and dismay of the Parti Québécois.

Bourassa had great political sense, but he could be wrong like all of us. We brought down the language law - Bill 22 - in 1974 and it was intended to promote bilingualism, having adopted my formula for companies and consumer contracts in general terms throughout the bill. At about 11:30 in the evening of the day we deposited the bill in the house, I met Bourassa walking in the garden of the National Assembly. I was troubled by the fact that we had put both language and education in the same bill. The 11:00 p.m. TV News had been terribly critical and both the anglophones and the Parti Québécois were against us, but Bourassa was ecstatic. He said: "Bill, vous voyez, nous avons les deux côtés contre nous. Nous allons passer entre les deux." But we did not pass through the middle. We were squashed like ham in a ham sandwich in the next election.

Bill 22 promoted bilingualism, but it was hated by the Parti Québécois because it was a rational compromise of the two confrontational language groups in Quebec, and it was also misunderstood by the Anglo Quebec population. Even the education provisions were more generous to allophones than the education provisions of Trudeau's Charter of Rights of 1982. But to this day, I can't explain the reaction to Bill 22, while the two parts of the population are still very confrontational, but over a more radical Act - Bill 101.

Despite the language debate, which divided the riding of NDG, my sticking to my position was appreciated, so that in three elections I never lost a poll and never got less than 80% of the vote. More than 80% of the electorate voted and on one occasion 89% voted and I got 87% of that vote. Mind you NDG at that time was like the deep South of the US of thirty years ago, solidly Liberal. The riding was lost in 1989 when the candidate vacillated. Vacillation is not appreciated in politics and was not appreciated by either side in NDG. ▸

Politics was fun and I particularly liked meeting the public and voters at church bazaars, pee-wee hockey games and in their homes on anniversaries. One really got the pulse of the public. One Saturday afternoon, I was visiting a couple (I'll give them the name of Mr. and Mrs. Michael O'Reilly) who were celebrating their 60th wedding anniversary. I rang the doorbell and when Mrs. O'Reilly saw me, she shouted down the hall, "It's Alderman Tetley from Ottawa." (You can appreciate my recognition coefficient from this.) Then she said to me, "Michael's very difficult, he hasn't got up yet. He's always been difficult." This on their 60th.

However, I was ushered into the bedroom, where Michael was sitting on the bed in his underwear, drinking from a bottle of rye whisky, which he offered me. He was pleased to see me, although he had some critical things to say about politics and politicians. We had a great talk, nevertheless, and as I was leaving, he said: "Before you leave Father, will you bless me?" He had confused me with the parish priest.

Friends of mine have been going out to lunch on this story and they always add that I did bless Michael.■

William Tetley, Q.C., LL.L (Laval 1951), practised law from 1952 to1970 in the law firm now known as Fasken Martineau DuMoulin. He was a member of Bourassa's Cabinet from 1970 to 1976 and since then has taught law at McGill University. He serves as counsel to Langlois Kronström Desjardins in Montreal and Quebec City. Professor Tetley is presently writing a memoir of his experiences in the practice of law, politics and university teaching. He is writing a book on his experiences in the practice of law, in politics and in teaching.

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Not Such a Great Guy After All

by Andrew Mason (Law II)

Prof. Tetley's article on Trudeau (P.E.T.) shows that there is a need to set the record straight. Trudeau has attained near-mythic status in this country, largely as a result of media fawning. A person can only be judged by a true measure of their actions. We must balance official bilingualism and the Charter with the rest of PET's record.

PET first made a name for himself driving around WW2-era Quebec wearing a German helmet to announce his disapproval of the war against Germany. He refused to serve in the armed forces. Was he a pacifist? Not really. He simply believed that he knew best. While PM, PET demonstrated this same tendency during the October Crisis. Filled with a loathing for Quebec nationalism/particularism and devoted to the idea of a strong central federal government (that would naturally be led by Liberals), PET was quick to exaggerate the threat of insurrection in the House of Commons. PET deliberately misled the House into supporting martial law.

The result? Several hundred otherwise innocent naive young Marxists were rounded up, roughed up and incarcerated in peace-time Canada. PET was entirely unfazed by this gross rights violation. He quipped "let the bleeding hearts bleed". How very Canadian! What love of liberty!

PET's approach to governing was megalomaniacal. In his defence he never attempted to hide his foppish affectations and egotism. Unfortunately for Canada, PET actually believed that he was a philosopher-king who could solve all of the nation's ills - If only everyone else would just shut up and leave him to the job. His policy of centralization and paternalistic national programs only served to deeply alienate the West and Quebec - a situation that has yet to be resolved.

Like most self-proclaimed "men of vision", PET was essentially boorish. The depths of his convictions made real and effective compromise and co-operation between levels of government and the two major linguistic/cultural groups impossible. PET was opposed to the idea of a "distinct society" in Quebec, which led him to violently oppose the Meech Lake Accord - designed to undo the constitutional quagmire created by PET's "repatriation" - in a fit of pique. Furthermore, PET's arrogance greatly contributed to the current federal government's sense that they are entitled to rule ad nauseam and that they are therefore entitled to use every underhanded trick in the book to maintain this stranglehold on power.

I, for one, am glad that PET's shadow is no longer cast over Canadian politics. Before we let the current regime and its apologists beatify PET we should take the full measure of the man. We should then balance truth against the panegyrics dedicated to furthering a myth. My humble suggestion? Canada should bravely move forward and cast off our false idols.■

My Dark Secret

by Gord Cruess (Law III)

I've got to get something off my chest.

I'm in the thrall of addiction. I used to smoke, but this is far, far worse. I want to kick my habit cold turkey, but it's stronger than me. It keeps drawing me back-when I'm alone, I can barely go half an hour without a fix. I don't want to be alone anymore.

The tragic irony of my situation is that it actually stems from not being alone. Others drive-and perhaps share-my obsession. They are "out there." And they-"we"-walk amongst the rest of you. I'd wager, however, that most of "us" don't know who else makes up our ranks, just as the rest of you don't know that there is an "us" apart from you.

Well I, for one, am going to break the silence.

I'm addicted to lawbuzz.ca. I am also a slave to the lesser-known, though no less entertaining, autoadmit.com (understatedly billed as *the most prestigious law school discussion board in the world*).

For those of you who don't know what I'm talking about, I'll explain. But first, a necessary caveat. I will not be responsible for any downward spiral that may result from your checking out these sites after reading this article. This stuff is highly addictive. I do not want my catharsis to come at the expense of others' productivity or positive use of spare time. Selfishly, though, I admit that I'm willing to take that chance.

Lawbuzz is a virtual chat forum for Canadian law students, and I assure you, there's no shortage of McGill participation. A veritable panoply of law-related discussions, from the serious to the inane, can be found there. And if the particular terrain you're interested in remains uncharted by lawbuzz then you can always break new ground and start a discussion of your own.

I'll throw out just a few of the gems to be discovered at lawbuzz. Interested in how others are dealing with the stresses of law school? You can find out at lawbuzz. Have a hankering for unscientific, quantitatively suspect rankings, compiled by fellow law students, of Canadian law schools (i.e. the everlasting McGill v. UofT v. everyone else debate)? Check out lawbuzz. Curious about the age-old question regarding the permissibility of "lawcest"? Read the sage pontifications of your anonymous brethren at lawbuzz.

I feel much better now. Maybe writing this piece is my way of posting something, if only to myself. More properly, I think, it's a challenge to myself to continue not posting anything. Up until now I've been a mere voyeur of this shadowy Webternet society, and I want even that to stop.

I confess, faceless friends, that I've tried to post. My first and only attempt transpired just the other day. The build-up - that is, thinking up and beginning to write my message - was nothing short of exhilarating. There I was, typing furiously and in full debunking mode, in response to a thread questioning whether we McGillians who stick around for 3.5 or 4 years are slackers (the ridiculous consensus seemed to be that we are, and that firms think so too). Before I could reach the climactic moment of truth, though, I was interrupted. There, hunched in my lonely third floor library carrel, I heard an interloper from the real world approaching. Embarrassed, I quickly closed my window, my maiden voyage into the lawbuzz foray aborted. I sat there frustrated, the release that only the "send" button could provide having eluded me.

Sigh. Maybe I'll screw up my courage again one day soon.

No. That's the addiction talking. Because I know that if I post, there will probably be no going back. That pre-post feeling I experienced was intoxicating, and I can only imagine the delirium that would have ensued if the fruits of my labour had magically appeared on the screen before me. And then, were someone to respond! I think, friends, that that would be too much.

After all, it's November. I am engaging in destructive behaviour. Exams and papers are rearing their ugly heads. It's time to study. Again, I think that's what this article is all about - throwing down the gauntlet to myself. A friend poetically calls the Internet the world's toilet. If that's true, then lawbuzz is McGill's, and I need to stop forcing my own head down it.■

Sponsorship Scandal, Schmonsorship Schmandal

by William Darling (Law II)

The long-awaited "Gomery Report" was released yesterday. Long-awaited, that is, for the Conservatives, the Bloc Québecois and the Canadian media. I honestly can't understand why anyone else would care. It seems that overall, about 1.13 million dollars might have been "stolen" by a few people who happened to be members of the Liberal party. This is no reason to throw out a government. There are many, many, many reasons to "throw out" a government (especially this one in particular) - but this is simply not one of them.

Much to the delight of the opposition parties, the media has helped make the sponsorship scandal seem like one of the worst occurrences in Canadian political history. Ha! While watching CTV news last night, it was reported that the sponsorship program cost taxpayers (you just have to use that word "taxpayers" - we are no longer citizens!) about 320 million dollars. First of all, that's not very much - especially as it was for a lofty cause. I find it hard to believe that so much has been made about 320 million dollars that was spent with the intent of promoting national unity. Why is there no media coverage about the fact that billions and billions of dollars have recently been stolen from taxpayers to pay off big business in the form of tax cuts? This is probably the cheapest financial political scandal ever.

Of the 320 million dollars that were spent on the sponsorship program, according to CTV, a STAGGERING 44 % went to "Liberal-friendly ad firms" in Quebec. What's wrong with that? The only thing that does not make sense about that number is that it wasn't 100 %. Why should the Liberals give ad contracts to "non-Liberal-friendly" ad firms? Shouldn't at least half of the contracts go to firms that support the party? In Quebec, there are few (if any) "Conservative-friendly" ad firms and there are certainly no "NDP-friendly" ad firms. To paraphrase Jean Chrétien, the only non-Liberal-friendly ad firms in Quebec are separatist-friendly ad firms. If CTV (and the media in general) believe that it would be a good idea to give contracts to separatist ad firms in Quebec to create national-unity advertisements, they must be crazy. But if only 44 % of those 320 million dollars went to Liberal-friendly ad firms, why in the world did 56 % - 180 million dollars - seemingly go to separatist-friendly ad firms in a program designed to promote national unity in the face of a referendum? That's what I'd like to know.

So according to the Gomery Report, a little over one million dollars was actually "stolen". Those few that are responsible should go to jail (as should Mulroney for the Airbus affair!). But it really has nothing to do with the Liberals. Blaming "the Liberals" for this is akin to blaming the NDP for Sven Robinson stealing a ring. Taking this logic to its conclusion would allow us to blame say, Quebeckers. Or how about all Canadians? Both of these groups are groups which those responsible form a part of. Hey, how about we blame Italian-Canadians since Alfonso Gagliano was (potentially) heavily involved? It borders on discrimination; I guess it's not surprising in light of the prejudice that many Muslim people have experienced because those responsible for the September 11, 2001 attack on the United States happened to be Muslim. "All Liberals are corrupt!," cries Stephen Harper. How is this different from crying that all Muslims are terrorists?

Maybe the Liberals should no longer be in power. But how about we find a real reason to throw them out like the fact that they might have a poor platform or that they're just no good at running our country? For opposition parties (read Conservatives and Bloc Québecois) to base their election campaigns on the fact that a few Liberals acted illegally, 320 million dollars was spent with the good and important intention of keeping our country together, and a little bit of money was stolen (that will be paid back) is pathetic. Come up with a good platform and maybe people will vote for you!■

Write for the Quid... Please?
quid.law@mcgill.ca

Membership of First-Year Students on Faculty Council

by Pierre Gemson and Jake Wilson (Faculty Councilors, Law I), and Neil Modi (Law II)

Faculty council is the main governing body of the Faculty of Law. Professors sit on faculty council, as well as certain student representatives. The Faculty Regulations state that students must have completed at least one year of studies at the Faculty before being able to sit as a Member at Large of Faculty Council. The LSA Constitution, which governs student elections, reserves at least one seat on Faculty Council for a first-year student. In past years, the clause in the Faculty Regulations has gone unnoticed. For many years, first-years have served on Faculty Council and since 2002, anywhere from two to three seats have been occupied by first-year students each year. In keeping with this practice and the LSA Constitution, two first-year students were elected to Faculty Council in recent elections. This year, the total number of seats for Student Members at Large has risen from four seats in previous years to six seats this year.

The LSA Executive, with the support of LSA Council and members of the faculty, is seeking an amendment to the Faculty Regulations to remove the condition that excludes first-year students from full membership in Faculty Council. Having informally consulted various faculty members on the issue, the LSA anticipates that the amendment to the Faculty Regulations will be accepted as a way to formalize previous practice established over several years.

First-year students are involved in all aspects of Faculty life and in LSA activities. Many first-year students have completed at least an undergraduate degree before commencing law school at McGill. Experience has shown that despite being in first year, students are quick learners, motivated, resourceful and efficient at adapting. In past years, these students have applied these abilities to their work on Faculty Council Committees and Projects. They have made positive contributions to the Faculty, the LSA and to student life and learning in general, all the while successfully handling the rigors of their academic studies.

Enabling first-year students to sit on Faculty Council ensures a greater possibility of establishing institutional continuity between academic years when these first year students decide to continue to participate on Faculty Council or as LSA Executives in subsequent years. For example Neil Modi, having served as a Faculty Councilor last year, continues to build on the work he did last year as this year's LSA VP Academic.

Increased apathy from upper-year students opens opportunities for first year students to get involved from the beginning of their studies. The enthusiasm with which first-years campaign and participate in elections demonstrates their level of motivation and concern for the future of the Faculty. This year's LSA Executive is composed of eight VPs, each of whom were elected or acclaimed when they were first-year students. When asking upper-year students to take a more active role, the usual replies are "sorry, I'm busy with recruitment", "I'll think about it" or "sorry, gotta finish in two and a half years - no time for getting involved..." Of course, this is not to say that upper-year students don't participate - they do. In reality, many upper-year students have participated early in their time at the Faculty, and now it is their time to think about employment (money pays the bills) and other concerns. In any case, while upper-years are oriented toward developing their careers, experience shows that first-years have their minds set on student participation. Is it not the policy of the Faculty to encourage such participation? ■

Did you Know...

An American study showed that, as an occupational group, lawyers have the highest rate of major depressive disorder?

(William Eaton et. al. Occupations and the Prevalence of Major Depressive Disorder, 32 J. Occupational Med. 1079 (1990))

The Sunshine Article

by Alison Glaser (Law I)

There is too much stress in my life. I have no idea what I'm supposed to be doing here. I don't know what to read, how to study, what exams are like, or what the third floor is for. I don't really understand what promissory estoppel is. I don't know if my French is good enough to practice law in Quebec. And what am I supposed to do over the summer??? All these things float through my brain when I'm trying to sleep, eat, or read for Constitutional, and they do not make me happy or calm.

From what I gather, I am not alone in these feelings. And apparently it doesn't get any better. Lindsey Miller, in the Oct 25 edition of the Quid, wrote about how law school has made her cynical. So, I've decided to make it my personal mission to change this.

Last week I received a really nice email from a classmate thanking me for convincing him to go out one night instead of staying in and studying. I told him that, contrary to logic, it is more beneficial to relax once in a while and see his friends that he had not seen in a while than to spend the time studying. When you are relaxed, you work more efficiently, and you are more able to enjoy school. And we all know it is easier to study when we are studying for an enjoyable class! I wish I could say that I came up with this great piece of wisdom myself. The reality is that I was simply passing along some good advice a friend in second year Law at NYU gave me.

So here is what I propose. I will write something in the Quid (hopefully every week) that includes something light-hearted and funny which hopefully will inspire you to take a few minutes yourself to think of something other than usufruct and so on.

I am necessarily being a bit flippant here, but I have a serious motivation behind my jocularity. According to McGill Counselling and Mental Health, a lot of their business comes from Law students burning out. So my goal is to try to get people to help themselves so that they don't get to that level. I hope to provide at least one helpful suggestion in order to promote better mental health among us stressed out law students.

Ok, so here goes for this week with the amusing anecdote and stress reducing suggestion. I was really excited this week since I got to give out candy to some trick or treaters. The absolute cutest child who came to see me was this little girl who, when asked what her costume was, said "I'm a princess and a witch all mixed togever"! It was super cute. Ok, I realize this story is a little lame, but I have no internet access in the Moot Court at the moment so can't come up with something better. I promise better quality for next week (and that is no puff!). My stress reducing suggestion is to take a bath. Light some candles if you can, and take at least thirty minutes to just soak there and not think about anything. If you have no bathtub, or you live in the ghetto and your tub is disgusting, take a nice long shower. Besides making you nice and clean (it goes a long way towards making you feel better, I swear), the hot water releases all kinds of happy chemicals into your brain, and makes you nice and relaxed.

Ok, I promise better things for next week.

Happy soaking! ■

Look for the Quid's New Look...

Grand Unveiling Next Week!

Lessons from Harriet

by Albert Chen (Law II)

The nomination and subsequent withdrawal of U.S. Supreme Court nominee Harriet Miers has raised many issues about the role of the judiciary and the prestige and power we accord to it. Indeed, sometimes these nominees and their demise become much more memorable as incidences of judicial and political struggle, highlighting conflicts within a nation over abortion, civil rights, and other such contentious issues. Although the pre-emptive withdrawal by Miers precludes us from analyzing the epic and most likely humiliating battle that would have ensued in front of the Senate Judiciary committee, her nomination demythologizes the independence of law from politics while at the same time avoids collapsing the two.

First, this personal patronage appointment reveals the hypocrisy with which U.S. President George W. Bush denounces judicial activist judges. Second, the near universal condemnation of Miers by both sides of the political spectrum as an unskilled and unproven judicial decision-maker exposes the values we assign to the function of judging. Finally, this process of subjecting nominees to political scrutiny shows a way in which politics can be reconciled with law in the Canadian context so as to be more honest about the role ideology and personal interpretation play behind chamber doors.

While not unprecedented, the nomination of President Bush's personal counsel to the Supreme Court can be seen as a violation of the separation of powers. The independence of the three branches of U.S. government, the executive, legislative and judiciary, is fundamental to the checks-and-balance system limiting the concentration of power that may lead to totalitarianism (or worse, monarchy.) By trying to put someone with strong personal loyalty to him into a position of influence in another branch of government that is supposed to help define Presidential power, the President tried giving his branch undue influence.

Judicial conservatives would reject this characterization and argue that the judges they nominate would only interpret the law and not make it. If one believes President Bush's avowal that Miers will be such a judge, using strict construction or originalism to interpret the constitution in a literal sense or according to the framers' intent, how then can she be a judicial activist? Judicial conservatives believe that the law is a neutral body and judges should be surgeons who make a diagnosis and prescribe a remedy out of their pharmaceutical books. However, it would be trite to say that a doctor's job was that straightforward. A doctor is confronted with new sicknesses and various possible treatments, all of which require personal interpretation, experience, and theories of sickness. Thus, while conservatives often criticize progressive judges of legislating and creating law in a manner that perverts the judicial function, conservative modes of constitutional interpretation are equally ideologies, ones that buttress the status quo against the evolving needs of a changing society.

It is a myth that conservative judges do not make value judgments when choosing a mode of interpretation. While some judges may feel at ease thinking like someone out of the 19th or even 18th century, they are in fact not in that context and they will never fully know the intent of the Constitutional fathers. This is not to say that this perspective is not valid or theoretically grounded. Strict constructionism is formidable precisely because of its intellectual elegance and root in textual analysis. However, it is only one approach and in the end court decisions are the outcome of the marketplace of ideas that pit the radically different judicial approaches of say, for example, liberal Justice Ruth Bader Ginsberg against conservative Judge Anthony Scalia.

To prove the point, the near universal condemnation of the Miers nomination shows that even conservatives believe law is not as mechanical as they would like one to suppose. If being a judge was simply a matter of reading a text and seeing if the issue at hand was covered by the law, then anyone who can read an instruction manual can be a judge. The few examples of Miers' opus were eviscerated as obfuscating and did not show her commitment to legal reasoning beyond her partisan praise of the chief. As both sides of the political spectrum acknowledge, quality of writing and persuasiveness of legal reasoning are vital to the function of judging. Perhaps this is why the John Roberts' nomination had much less trouble: both parties recognized that he is capable of presenting a legal argument that can convince four other judges to agree with him. That is the litmus test of a good judge. ▸

What has this got to do with the Canadian judiciary? The Miers nomination teaches us that politics does intersect with law whether we admit it or not. By skirting the political battle, Canadians sublimate the 'crass' questioning of a judge's ideology in order to preserve the veil of objectivity and prestige. But as any law student will know from reading Canadian Supreme Court decisions, differences in ideology and approach are evident. As arbitrators of our rights and obligations, court decisions are often controversial and divisive. Because they impact our particular lives, Canadians have a real stake in why these judges are chosen. A corollary to this right to know is the right to give voice to our disagreement on such choices.

Only recently has the Canadian government put in place reforms whereby a Parliamentary committee, composed of Parliamentarians and members of the legal and non-legal community, works in counterpoint with the Minister of Justice to come up with a short list of three candidates for the Prime Minister to choose from. After a choice is made, the Minister of Justice appears before the House of Commons Justice Standing committee to explain the qualities of the person selected. These efforts to increase transparency are to be lauded and encouraged because they increase the political accountability of the appointing government. The fear, however, is that these changes are merely trappings of legitimization. We should go farther and expose these judges to public scrutiny so that we have an idea of their legal approach, as expressed through their written judgments and testimony before the Parliamentary committee. This process can also focus the light on any inappropriate personal loyalty that might undermine the functions of the different branches of government. Whether we want to require that these judges be confirmed through a vote by Parliament is another question that must be seriously discussed.

Some would argue that the current system of appointing Supreme Court judges is well suited to the Canadian context, and thus we shouldn't attempt to fix it. They fear that those who now most vocally call for political scrutiny of the judiciary in Canada, the conservatives who bewail the liberal state of the Canadian Supreme Court and its bench of judicial activists, will veto judges because they are too liberal. They may point to the Miers nomination as a case where a nominee failed because she was not perceived to be conservative enough. It is important to keep in mind though that the Liberals will not always be in power. What is being proposed is a process that mediates different ideologies, not determine substantive outcomes. One day the dominant political discourse may shift towards judicial conservatism, and the progressives in turn will need to rely on such a process to vet conservative nominees. The 1987 failure of U.S. Supreme Court nominee Robert Bork is a case in point. He was voted against in the Senate because his legal approach would have allowed a constitutional interpretation sympathetic towards banning abortions.

It is easy to look South of the border and laugh at the theatrics of judicial nominations. But it is time to tell the judges that they too have no robes, and inspire a frank conversation about the role of the judiciary within our political system. ■

INFORMATION SESSION FOR FIRST YEAR STUDENTS ON

EXAMINATIONS

Offered by:
Associate Dean (Academic) Geneviève Saumier
Assistant Dean (Internal Affairs) Véronique Bélanger
Student Affairs Officer Christine Gervais

(how to prepare for them, how to write them, how to keep your cool...)

Monday, November 14, 2005
12h30 - 14h00
Moot Court

Tristan Musgrave, We Salute You!

by Geoffrey Conrad (Law III)

When the dust had settled after Overruled's heartbreaking 1-0 loss in penalties on Thursday night, which eliminated the team from the playoffs, a lone player was left standing at the midfield strike under the lights of Molson Stadium. A career had come to a close, and I suspect Tristan Musgrave needed to take a few minutes to let the finality of it all sink in.

It's difficult to put into words what Musgrave meant to the team, to the faculty, even to the whole world of soccer. While anchoring McGill Law's intramural soccer teams, the student-athlete hailing from Campbell River, British Columbia brought unparalleled dedication, leadership, and courage to the pitch-day in and day out-for four unforgettable seasons.

And despite the fact that his teams never really even came close to winning any championships, Musgrave would return year after year, hopes high, like a jilted lover who just won't take no for an answer. Said Andres Drew, a prominent member of the 2005 edition of Overruled, "Tristan exemplified tenacity. No matter what happened out on the field, he would always come back for more. There was nothing he wouldn't do for the team. Whenever I have a tough decision to make in the LSA office, I think to myself, 'what would Tristan do?' He's been my spiritual mentor and should be an inspiration to everyone."

Musgrave was equally renowned for his versatility. A veritable Matthieu Dandenault of his sport, Musgrave could play every position on the field. While perhaps best suited to centre-midfield (intramural soccer coordinator Marco Pantanella was once rumoured to have mentioned the names of Musgrave and French international Zinédine Zidane in the same breath, although a comparison to Roy Keane may have been more appropriate), Musgrave was not afraid to step in (or out for that matter) wherever he was most needed. This season alone he played centre-back, various midfield positions, as well as striker. That characteristic versatility transcended even the sport, as Musgrave felt equally at home distributing the ball as he does leading discussion in Government Control of Business.

Musgrave's contribution can perhaps best be measured in the words of his teammates. Peter Kaes, who broke into the team this year, said "it was an honour just to share the same field as him, let alone be on the same team. When I started at the Faculty, Tristan was already a legend. I looked up to him. To get to play with your first-year hero, I don't think words can do justice to how it felt. Let's just say that I 'm pretty sure I understand how Sydney Crosby must feel playing with Mario this year."

French striker Clément, who goes by only one name in the Brazilian fashion, and who was a consolation prize of sorts for Musgrave after he failed in his attempt to lure Ronaldo away from Real Madrid this season, had this to say: "dans mon village, in France, where I grow up, le football est roi. And there is no bigger stage than McGill intramurals-no star brighter than Tristan Musgrave. Les garcons want to be him, les filles want to be with him."

Longtime teammate Andrew Tischler perhaps summed it up best when he said "Tristan was McGill intramural soccer. But more than that, he's a great guy. I'm privileged to say that I can count him as a friend."

James Newman, touted by some as Musgrave's heir apparent at centre-midfield, but criticized at times for his playboy lifestyle and level of commitment to the team, was resolute: "Next year, we're bringing home the trophy for Tristan. That's a guarantee. Read my lips: G-U-A-R-A-N-E-T-E. We owe it to him. He may be graduating, but he'll always be our captain."

Unfortunately for Musgrave, whatever happens next year, he will never get to taste victory. Critics might argue that the 4-year captain didn't have the mettle to pull out wins in big game situations but, as Dan Marino's career stands testament to, greatness sometimes cannot be measured in championships. Yet Tam Boyar, the disconsolate rookie goalkeeper out of Dartmouth, couldn't help but asking 'what if?' "I knew stepping in here that this was Tristan's last kick at the can. Sure he was in the twilight of his career but expectations were high. I keep thinking that maybe if I hadn't given up that flagrant own-goal in the second to last game of the season when the other team was 3 men down, things would be different. Maybe we would have finished higher in the standings, maybe we wouldn't have been knocked out in the first round, maybe Sunday night we would have been playing for the championship. I feel like a let the whole team down."

But Musgrave was never one to play the blame game. At such an emotional time, the sure-fire first-ballot hall of famer understandably declined comment, but a player who spoke on condition of anonymity told this reporter that after the last goal went in, Musgrave's parting words to the team were typically classy: "I'm so proud of you guys. I'll never forget about this team. Overruled's made me the man I am today."

And just as quick as that, Musgrave was left standing alone in the empty stadium. There will be no more goals, no more half-time pep talks, no more e-mails about Tuesday night scrimmages, and no more adoring fans. Just memories. Now it may have been a trick of the eye, or the reflection from the lights, but if you looked closely as he stood there at the mid-field strike, his career behind him, I swear you could see a tear in the old war-horse's eye. Tristan Musgrave, we salute yo —

Corruption and the Black Market - Are they necessarily bad?

by Jessica Miklos (Law III)

You go to a restaurant and leave a tip for the server. Why? Well that depends. Maybe the service was really good and you want to say thank you. Maybe you come here all the time and you know that the servers will be less attentive next time if you don't leave a generous tip. Maybe you know that the server earns a very low wage and is trying to support him or herself while completing a degree and this is your way of helping out. Maybe you hate the practice of tipping, but your dinner companion is someone who will think you cheap if you don't. Maybe you don't even think about it - it is just something that everyone does so you do too.

In general, we won't condemn you for leaving a tip. Some among us may even condemn you if you don't. But what if you take that same tip and give it not to a server, but to the government official who is going to process your passport? Or to the police officer who has just stopped you for speeding? Suddenly that tip doesn't seem quite so defensible anymore. But what if everyone were "tipping" the officials or police officers? What if these same officials were also underpaid? Would that change your assessment of the situation? If "tipping" is wrong in one situation but acceptable in another, then what sets the situations apart? Is something morally wrong just because there is a law against it, or does it take more than that to make it wrong?

And if your "anti-tipping" law were ignored by the vast majority of the population, what would that tell you? Does it mean that the majority of the population is morally corrupt, or does it mean that you've missed something important when drafting your law?

In A moral economy of corruption in Africa? J.P. Olivier de Sardan suggests that before imposing a European or North American conception of corruption on Afri [illegible] might want to look at the logic or rationale behind the practices that we are trying to get rid of. It may be that a particular rule will only work in a particular cultural context, and if we try to take the rules developed in one culture and impose them on a society that operates with different social rules then we won't get the compliance that we are hoping for. It may just be that the value that the practice in question supports is more important to the receiver society than the reasons behind the rule that is being imported. It may also be that the preconditions necessary for making the rule work simply do not exist yet in the recipient society.

Not all examples of rules that don't work are being imported from a foreign jurisdiction. Our own legislators and bureaucrats are perfectly capable of developing rules that do not reflect the values or realities that will be faced by the people that they are supposed to apply to. For a historical example, we could look to the prohibition of alcohol in the early 1900s. We could question whether some forms of taxation provide current examples of the same problem.

When markets develop that are not in compliance with the rules that apply to them, we can talk about the existence of an underground economy, rather than about a problem of corruption. But to some extent, we are talking about the same type of problem, just on a larger scale. In both cases, we have a general prohibition of an activity, and examples of that activity being carried out in spite of the prohibition. In both cases we can also find examples of prohibited activities that may be construed as morally neutral, or even beneficial to society as a whole.

In The Ambiguous Moral Foundations of the Underground Economy by George L. Priest, we see several examples of prohibited market activities that are actually more efficient at creating wealth, allocating resources and providing economic activities for the poor than government programs or regulated market-places. As with the activities that were labelled as "corrupt" we are left questioning whether certain government prohibitions are supportable.

When examining "underground" economic activity with problems of poverty in mind, it is not always clear what policy directions are preferable. As Priest points out, underground economies provide increased economic opportunities for the poor. Two examples would be sweatshops employing illegal immigrants and trafficking in street drugs. In both cases, the front line employees are usually people who have limited opportunities in the legal job market. If we move to legalise either enterprise, we risk putting these front line employees in a worse economic position than they would be in if we let the underground economy continue to operate. The front line drug dealer might be replaced by a pharmacist or retail employee if the products are legalised. The sweat shop employee might be find him or herself being squeezed out of the market by "legal" employees if wages are raised or labour standards are enforced. But if nothing is done then we leave these front line employees in a position where they are exposed to risks of violence, exploitation and unsafe working conditions.

Solving these problems will be complicated. Neither Priest nor de Sardan have solutions to these types of dilemmas. They do however suggest that high rates of corruption or participation in the underground economy may indicate that legal rules may not be reflective of the moral culpability that society (or segments of society) has attached to a particular activity. ■

The forgoing article reflects a discussion that took place in my Law and Poverty class.

Chico Prevails Again

by Michael Hazan (Law IV)

Halloween was truly haunting for Woolwich as Captain Casey Leggett had a monster of night leading Chico to a 5-2 victory. For the second straight game, the Namur native scored a hat-trick as the team rallied around their leader for its fifth straight victory.

Down 1-0 in the first period, Leggett scored his first off a shot from the slot in which the Woolwich keeper had no chance. After yours truly was shown the gate after a defense to a Jobidon-like attack, Leggett scored again before the first period ended. "It truly was Halloween havoc out there and we are in the process of appealing Mike's one game ban," said a reassuring Leggett as he chomped on some of the goodies Zanna picked up while trick-or-treating earlier that night in the ghetto.

Defenseman Nat Brand continued his scoring streak by deftly shooting the puck passed the goalie while on a one-on-one. Leggett iced the game two minutes later with Chico on the power play. Leading 4-2, Chico was pressing and just to show how unselfish he is, a wide-open Leggett passed to Brand who scored his second of the night. The goal meant that Brand and Leggett are now all tied up in the race for the Rickford Award and the prize of all expense paid trip to the home of the team's namesake. "The trip would be nice but I care more about winning," said Brand as he signed autographs for the children who waited outside the McConnell Arena for him to come out.

Once again, Chico's grinders made up of "Coffee Crisp" Conrad, "Dairy Milk" Desmarais, "Whoppers" Will Darling, "Snickers" Steve Gough, "Bazooka" Bob Moore and "Twizzlers" Zanna played a stellar game in front of "Mr. Big" Mike Eldridge.

Chico's next game is up in the air because the team may be down to only five players because of Toronto recruitment, the MIA trio of McKay, Osellame and Lowe and because it is past Professor Lametti's bed time. ■

Some Things You Might Not Have Known About Law Games...

by Kara Morris (Law II)

I was browsing some former Quid articles and came across some things I may have forgotten to tell all those of you who have never been.

Did I fail to mention the non-sanctioned parts of Law Games? Because in the end what you will take away from the experience is more than a bad hangover. The day time may be reserved for sporting events and mooting competitions. But the nights… well, there is one thing that avoids a hangover after drinking all night… and that's drinking all the next day.

The most memorable part of Law Games in Ottawa was not winning the academic trophy (although that was pretty great). It was sitting in a hotel room at two in the morning, singing every song we could think of to Caolan playing the guitar. OK, so maybe we had a "moment." That doesn't deny the fact that all of us had way more friends when we left Law Games than when we arrived, and that some of my best friends from law school were actually introduced to me at the games.

First years, you know that approximately one third of the class that you never see since they have the wrong letter of last name? Well actually you don't, because you never see them. But one way to meet some of them is to sign up for Law Games and party with them for four days in the beautiful town of Sherbrooke this January. Odds are you'll meet a slough of upper-year students who will be a very valuable source of information and summaries in April and beyond.

I was one of those crazy, audacious, somewhat geeky kids that went to Law Games without any of their pre-Law Games friends. I was put in a room with a group of first year girls, mostly because I was a first year girl. I went and I had fun. Lots of fun. And I felt included, and got to know many many people by name. And not just people in my year, but upper years as well. I had such a great time and found it such a valuable experience that I decided to challenge myself ▸

as VP Athletics this year and lead that same team to glory in Sherbrooke.

This is the year to come and take part. Travel costs and travel time is at an all-time low, barring those years we are able to take the metro to the games.

Hey, you thought orientation was fun. Well (sorry Miguel) this is an even bigger party. But Miguel *will* be there, so don't you worry your pretty little heads.

This is a call to your competitive spirit (I know it's in all of you, I see how everyone is freaking out about their grades for the legal memo and exams coming up in – omigosh! – a month). This is a call to defend the forces of good against the forces of evil on the playing field, in the gyms, and in the pubs of Sherbrooke. This is an excuse to skip the first four days of classes and meet people from other law faculties. And to meet people, more importantly, from YOUR law faculty. If you've never been to Law Games, come out and try it for yourself. It's not getting any cheaper. It's not getting any easier. Come be part of the Red Devils as we go for gold in sports, academics, and socializing.

Final deadline for registration is Friday Nov. 11th. Get your registration forms at the LSA office. See you in Sherbrooke! ■

The articles that inspired this one can be found in the Quid Novi online archives for Oct. 14th, 2003.

Law - A Shield for the Stupid?

by Adrian Lomaga (Law II)

Laurie McQueen's "Excerpt from 'Law and Poverty'" was a sentimental, melodramatic, and completely misguided critique of law regarding credit. The assumptions upon which the article was written smack of distorted materialist values which blur the line between needs and wants. Who in their right mind purchases a washing machine and dryer "as a matter of need and not convenience?" Nobody <u>needs</u> a washing machine – let alone a dryer. You can wash your clothes for a dollar or two at a laundromat and then dry the clothes at home if you are really low on cash. This applies to any large purchase people may consider making. Whether it be a car, a dishwasher, or even a computer, there are ways to get around in life that may be less convenient, but are nonetheless affordable.

Why should I have sympathy for a person who buys an expensive gadget with somebody else's money, only to complain about the interest charges? It is not as if credit cards hide the amount of interest that is charged on late payments. That interest charges can range from 4% to 30% is common knowledge. Moreover, if a person does not have the self-control to save money, wait patiently, and then buy the item with cash, then they must be willing to pay for the money they borrowed. I don't care whether employees are "trained in strategic sessions… to maximize sales" by selling instalment plans. I don't care whether "lots of people in our society lack the experience, the time, or the means" to make sure they understand their contract. If they do not care to learn about the arrangements in the contract they signed, why should I?

As for the interest rate applied by credit card issuers, the assertion that the rates are extortionate based on the comparison between the 18.5% charged on TD's student visa compared to the 4.5% prime rate and the 1.7% paid on a 1-year deposit fails to convey the reason behind the different rates. Credit cards are generally unsecured lines of credit whereas mortgages (where the prime rate will apply) are usually secured. This means that when a mortgage is in default, the creditor knows that there are assets which he or she has a right to seize to recover the debt. Moreover, the assets will likely be of sufficient value to cover both the costs of recovery and the money borrowed. When a student is in default of his or her credit card payments, the creditor does not know whether he or she will be able to recover the money. There is a high probability that the borrower may have no assets to speak of and could declare bankruptcy, forcing the creditor to write-off the loss entirely. For this reason, there is a large range of interest charges. The riskier the loan, the more it costs.

Law is not meant to shield the stupid from irresponsible bargains. Are people so inept and irrational that they cannot make their own decisions and require paternalistic regulations to shelter them from credit card debts they incurred because of their own impatience? Good things come to those who wait – and that, at a far cheaper price. ■

The High Costs of Law & Economics at Everyday Low Prices, Brought to You by Wal-Mart

by Jason MacLean (Law III)

In what is a fascinating paper about the origins of corporate organization ("What do Bosses Do? The Origins and Functions of Hierarchy in Capitalist Production"*), Harvard Professor Stephen A. Margalin suggests:

> Workers – manual, technical, and intellectual – may take the possibility of egalitarian work organization sufficiently seriously to examine their environment with a view to changing the economic, social, and political institutions that relegate all but a fortunate few to an existence in which work is the means to life, not part of life itself.

Workers' right to organize, and the constitutionally protected freedom to associate that is the foundation of this right, are vehicles for the creation of an egalitarian – and more meaningful – work-life culture. The efficacy of this right, however, is under severe attack.

A case in point is Wal-Mart Canada Corporation v. Saskatchewan Labour Relations Board (2004 SKQB 324 (CANLII). In May 2004, United Food and Commercial Workers Local 1400 applied to the Saskatchewan Labour Relations Board for union certification after a majority of employees at the Wal-Mart store in Weyburn, Saskatchewan signed union membership cards; Wal-Mart Canada Corporation and a number of employees from the Weyburn store opposed the certification. During the initial hearings the Board ordered Wal-Mart to produce internal anti-union strategy memoranda so the Board could determine if the company had breached Saskatchewan labour laws during the unionization campaign. Wal-Mart refused (arguing the Board had exceeded its jurisdiction) and appealed successfully to the Saskatchewan Queen's Bench to quash the Board's two orders for document discovery. The Saskatchewan Court of Appeal overturned this ruling, however, and affirmed the Board's order, with which Wal-Mart must comply; the Supreme Court of Canada refused to hear Wal-Mart's appeal of the Saskatchewan Court of Appeal's decision.

What is more interesting than the contested nature and scope of the Labour Board's jurisdiction, however, is the other argument Wal-Mart made before the Saskatchewan Queen's Bench, an argument that was in the end not ruled upon. Wal-Mart argued that section 9 of the Saskatchewan Trade Union Act is an unconstitutional violation of its section 2(d) Charter right and that this violation is not saved by section 1 of the Charter.

Section 9 of the Sask. Trade Union Act reads thus:

> The board may reject or dismiss any application made to it by an employee or employees where it is satisfied that the application is made in whole or in part <u>on the advice</u> of, or as a result of influence or of interference or intimidation by, the employer or employer's agent.

Section 2(d) of the Charter reads as follows:

> Everyone has the following fundamental freedoms:
>
> (d) freedom of association

Wal-Mart Canada argued (and doubtless will soon argue again) that section 9 of the Act, and more specifically the word "advice," restricts the freedom of an employer to communicate with, or to provide information to, its employees. Wal-Mart of course concedes that if the communication amounts to intimidation or coercion it is not constitutionally protected.

The learned trial judge held that he had not a sufficient factual record before him to rule definitively on Wal-Mart's Charter argument – a curious position to take given that he quashed the Board's two orders for document discovery, documents including those with titles like "Wal-Mart: A Manger's Toolbox to Remaining Union Free." Indeed, the learned trial judge evidently believes that such a document would not be "likely relevant" (the standard for document discovery in these circumstances) to the union's claim that Wal-Mart pursues an anti-union policy based on intimidation. Rather, the learned trial judge looks forward to Wal-Mart making its constitutional argument before the Board and then to reviewing the Board's decision on that argument. As the learned trial judge put it: ▸

> As illustrated by the authorities, the Board has no special expertise respecting Charter issues and the Court need not extend any deference to the Board's decision on a Charter issue.

True, but consider the learned trial judge's reasons with respect to Wal-Mart's constitutional claim, notwithstanding said lack of a proper factual foundation, which lack precluded the learned trial judge from ruling:

> Wal-Mart Canada's position has considerable merit considering the often close and special nature of the relationship between an employer and an employee that has long been recognized by the law. If s. 9 has the effect of restricting freedom of expression between an employee and an employer that does not constitute interference or coercion, then s. 9 may well violate s. 2(d) of the Charter and, if not saved by s. 1, it is unconstitutional. Section 9 was in place before the Charter was enacted and may well now be out of touch with reality by permitting a labour relations board, in a stereotypical and patronizing manner, to disregard the deliberate and informed action and legitimate wishes of employees on the basis of irrelevant and improper considerations.

Wal-Mart argues that, because of restrictions like section 9, common across Canada in provincial labour relations acts, it cannot pursue its policy of "open communication in the workplace." In effect, Wal-Mart seeks to rely on its right of freedom of association to eviscerate the freedom of association of its employees, ironically but shamelessly enough. Ironic and shameful too is the learned trial judge, who cited, among other authorities, the Supreme Court decision of *Harper v. Canada* (2004), which holds at paragraph 17 that the freedom of expression protects not only the speaker but also the listener and the reader. Thus do Wal-Mart and the learned trial judge agree that Wal-Mart employees must be protected from provisions like section 9 of the Trade Union Act and from Labour Relations boards, who would seek to deprive Wal-Mart employees of the benefit of Wal-Mart Canada Corporation's "advice."

If Wal-Mart is ultimately successful in its constitutional challenge, corporations' rights during organization drives may well be significantly expanded, much to the detriment of workers' efforts to make work egalitarian and meaningful. The result will not be a result of fairness or efficiency – neither law nor corporate hierarchy is in this case or any other an expression of a uni-directional, teleological path toward progress. The result, rather, will be one of power, and simply the latest chapter in a story narrated by Margalin and others concerning the destructive drive toward inequitable accumulation, exploitation, and waste.

The issue, then, is not simply as Professor Roy Adams suggests in his short and commendable essay "Tolerating Wal-Mart's anti-unionism betrays our ILO obligations,"** one of corporations – and states – not following existing laws and agreements (for example the 1998 International Labour Organization's Declaration of Fundamental Principles). The issue is broader still, encompassing the very construction of laws dealing with corporations and their employees – the intersection of corporate, constitutional, and labour laws. The constitution of work and the constitution of law are inextricably bound-up together, and arguments to the effect that states and corporations are not following the laws on the books – while valid – are increasingly likely to miss the larger point, to wit, the corporate redefinition of laws and norms regarding work, communication, and freedom, and much else besides.

As a practical matter, we spend a goodly portion of our time working. Practically, then, work is a site – at once a means and an end – of the production of not only goods and services but of meanings. Given the radical erosion of civil society in western countries, work is one of the few remaining sites where we might practice the kinds of democratic habits that enable and enrich us both personally and collectively. Wal-Mart is not only an unconscionably unethical and undemocratic employer, but it is a kind of microcosm of the new economy of meaning that we are presently negotiating. If we are to take the metaphor of corporate – and market – governance seriously (and we had better), then we must begin to think about what kind of governance corporations and markets can provide. What is more, we had also better begin reflecting on the sobering fact that Wal-Mart's values are, increasingly, our own. ■

The foregoing article reflects a discussion which took place in my Law & Poverty seminar.

*The Review of Radical Political Economics, Vol. 6, No. 2, Summer 1974.

**The CCPA Monitor, May 2005.

The Sudoku Challenge

by Szandra Bereczky (Law III)

A perfect way to engage your mind [in or outside of class].
Does "wisdom being at the end"?

	8	6		7		1	3	
	5		8		9		6	
		1				2		
1			7		2			6
5								2
6			9		3			5
		4				5		
	9		1		8		4	
	6	3		4		9	8	

*Answers in the next Quid